# CITY-PLANNING LEGISLATION

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As the term "city planning" is now very generally interpreted, any legislation which contributes to the successful carrying out of plans for a city's physical growth should find a place in a comprehensive survey of city-planning legislation. To make such a survey would be rather too ambitious just now when the subject of city planning is so little known to the indexers of legislative records and the material must be searched for under a variety of headings. Moreover, very effective tools for the city planner are ground out of the routine of departmental work. Such was an act passed by the Massachusetts legislature of 1913, which provides that assessed valuations may be introduced as evidence of value in cases where the municipality is a defendant in an action brought to recover compensation for the taking or damaging of land. This act promises to be a valuable help to the municipal departments in charge of condemnation work and is as much a city-planning measure as the legislation with a more prominent city-planning label to which we must confine this survey.

City planning or city building is primarily a question of the municipality's ownership and control of land. Legislation to advance city planning, therefore, will be concerned, first, with such measures as affect the municipality's getting land, paying for it and regulating its use by others; and second, with the creation of administrative agencies with city-planning functions.

## *City-Planning Commissions*

During the last few years there has been notable legislative activity in the administrative field:

Connecticut, in 1907, by special act authorized the city of Hartford to appoint a city-planning commission. This was the first legislation of the kind in the United States. In 1913 a similar act was passed for the city of New Haven.

Maryland, in 1910, passed an act creating a planning commission for the city of Baltimore.

New Jersey, in 1911, allowed cities of the first class to appoint city-planning commissions. Pennsylvania, in 1911, passed a similar act for cities of the second class (Pittsburgh and Scranton).

New York, in 1913, authorized cities and villages to appoint planning commissions.

Massachusetts, in 1913, made mandatory the establishment of local planning boards in cities and towns above 10,000 population.

New Jersey, in 1913, amended the act of 1911 in several important details.

Pennsylvania, in 1913, created an additional executive department in cities of the third class to be known as "the department of city planning," and established the first suburban metropolitan planning commission in the United States for the vicinity of Philadelphia.

Ohio, in 1912, adopted an amendment to its constitution which allows cities to manage their own affairs, and the way is open for including in city charters a plan commission as one of the administrative agencies. Cleveland and Dayton have already taken advantage of this opportunity—Cleveland by a clause in the charter making mandatory the appointment of a city-planning commission; Dayton by a permissive clause.

The Massachusetts legislation is unique in putting the stress on the human side of city planning. The local planning boards are to "make careful studies of the resources, possibilities and needs of the city or town, particularly with respect to conditions which may be injurious to the public health or otherwise injurious in and about rented dwellings, and to make plans for the development of the municipality with special reference to the proper housing of its people."

Connecticut legislation is unique in making the city-plan commission one of the agencies which may exercise the power of excess condemnation. The city may buy and hold real estate for establishing parkways, park grounds, streets, highways, squares, sites for public buildings and reservations in, about, along and leading to the same, and after the completion of such improvements "may convey and give good title to any property thus acquired and not necessary for such improvements, . . . and may for the purposes of this section act through said commission."

Aside from these differences, the powers given the plan commissions are much the same. They are directed to prepare plans more or less comprehensive for the systematic development of the city and usually are directed further to act in a mildly advisory capacity by investigating and reporting on such questions as the design and location of public buildings, and the location, alteration and extension of streets, parks and other public places. It is as if the legislature were convinced that the growth of the city should be directed and the work of the various municipal departments should be correlated, and that this task was for a new agency, but that it was entirely at a loss how to direct the energies of the proposed agency and therefore merely set it loose on the job with but little guidance. This characterization is not true of the Pennsylvania act for third-class cities or of the section in the Cleveland charter making mandatory a city-planning commission. The first specifically provides that:

> Clerks of council shall, upon introduction, furnish to the city-planning commission, for its consideration, a copy of all ordinances and bills, and all amendments thereto, relating to the location of any public building of the city; and to the location, extension, widening, narrowing, enlargement, ornamentation, and parking of any street, boulevard, parkway, park, playground, or other public ground; and to the relocation, vacation, curtailment, changes of use, or any other alteration of the city plan, with relation to any of the same; and to the location of any bridge, tunnel, and subway, or any surface, underground, or elevated railway. The said commission shall have the power to disapprove any of the said ordinances, bills, or amendments, which disapproval however, must be communicated to councils, in writing, within ten days from the introduction of said ordinances; but such disapproval shall not operate as a veto.
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> All plans, plots, or re-plots of lands laid out in building lots, and the streets, alleys, or other portions of the same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, and located within the city limits, or for a distance of three miles outside thereof, shall be submitted to the city-planning commission and approved by it before they shall be recorded.

Under the Cleveland charter a commission of even greater power might be created.

> There shall be a city-plan commission to be appointed by the mayor with power to control, in the manner provided by ordinance, the design and location of works of art, which are or may become, the property of the city, the plan, design, and location of public buildings, harbors, bridges, viaducts, street

fixtures and other structures and appurtenances; the removal, relocation and alteration of any such works belonging to the city; the location, extension and platting of streets, parks and other public places, and of new areas; and the preparation of plans for the future physical development and improvement of the city.

Here are the first suggestions of how the new correlating agency is to succeed in its delicate task of keeping a gentle but controlling hand on the policy of those municipal departments whose work affects the development of the city plan.

### *Excess Condemnation of Land*

Among the measures affecting the municipality's ownership and control of land, excess condemnation, or the taking by a municipality through its power of eminent domain of more land than is needed for the actual construction of an improvement, has been urgently pressed upon the law-making bodies as the most vital need in connection with city building. As a financial measure it has been urged that its use under proper conditions would allow the city to recoup much of its outlay in an improvement by the sale of surplus land at a higher price. It has also been pointed out that only by a larger right of condemnation can the city control the use of land abutting on parks, parkways or widened thoroughfares and thus secure the full commercial as well as the esthetic return from the improvement.

In 1904 the legislature of Massachusetts ordered an investigation into European methods of taking land and as a result of the report by the commission appointed, it passed the first legislation in which was incorporated the principle of excess condemnation, limited narrowly, however, to giving the city the power to take "by right of eminent domain the whole of any estate, part of which is actually required for the laying out, alteration or location by it of any public work, if the remnant left after taking such part would from its size or shape be unsuited for the erection of suitable and appropriate buildings and if public convenience and necessity require such taking."

Ohio, in 1904, and Maryland, in 1908, adopted the excess condemnation principle in legislation for the protection of parks, parkways and approaches to public buildings and only for these specific purposes.

The Virginia assembly of 1906 gave power to municipalities to take more than was necessary "when the use of the land proposed to be taken would impair the beauty, usefulness or efficiency of the parks, plats or public property, or which by the peculiar topography would impair the convenient use of a street or render impracticable without extra expense the improvement of the same."

Connecticut legislation on the subject has already been noted under the discussion of plan commissions.

By the acts of Pennsylvania in 1907, cities are allowed to acquire by appropriation private property within 200 feet of parks, parkways and playgrounds. Up to 1912 there was no use made of any of this legislation, but in that year Philadelphia appropriated land in excess of actual needs in connection with the Fairmount Parkway. The question of the constitutionality of the act was raised and the lower court decided that the city could make the taking, but the supreme court of the state overruled this decision, holding that the act was unconstitutional.

Because of the doubtful constitutionality of excess condemnation acts, the legislatures of New York, Massachusetts and Wisconsin passed resolutions referring to the people the question of adopting an amendment to the constitution containing the principle of excess condemnation, and the people of Massachusetts and Wisconsin have already adopted that amendment. The New York amendment was defeated, but another has since been passed by the legislature and was accepted by the people in the fall of 1913. It is interesting to find that the sweeping language of the first New York amendment providing that when private property is taken for public use by a municipal corporation "additional adjoining and neighboring property may be taken under conditions to be prescribed by the legislature by general laws; property thus taken shall be deemed to be taken for a public use," has been greatly modified and follows closely the language of the Massachusetts amendment, providing that cities may take "more land and property than is needed for the actual construction in the laying out, widening, extending or relocating of parks, public places, highways or streets; provided, however, that the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street."

*Assessment for Special Benefit*

The peculiarly American method of distributing the cost of improvements is by assessment on the property specially benefited by the improvement. Originally employed chiefly to defray the cost of street improvements, such as surfacing, grading, curbing, etc., it is now the very general practice, except in some of the New England and Southern States, to include some or all of the cost of land taking as one of the items of improvement cost which may be assessed, whether the taking is for a street widening or extension, or for parks or parkways. The principle has been most thoroughly tested under the park laws of Minnesota and Indiana and in the provisions of the charter of Kansas City, Mo., relating to parks.

In Ohio, the supreme court long held that special assessments to pay the cost of land taking violate the state constitution, but in 1913, a constitutional amendment was adopted which makes the law of Ohio uniform with that of the rest of the United States.

*Condemnation Procedure*

The legislation which has brought very helpful changes in methods of condemnation procedure is of the sort that was described at the outset of this article and easily escapes attention. We have already noted the legislation in Massachusetts which allows the introduction in evidence of assessed valuations in condemnation cases. The same legislature directed that condemnation cases should be advanced for speedy trial, thus eliminating one cause for the great delay in putting the city in possession of land taken by eminent domain. In the same year Oregon passed legislation expediting the possession of land by the municipality in condemnation cases, and minor improvements in condemnation procedure were brought about by legislation in Maryland, Kansas and Missouri.

*Municipal Regulation of Private Land*

There has been but little legislative activity in the field of regulation of privately-owned land by the municipality, apart from the provisions concerning the height of buildings adopted in Boston in 1904 and 1905, and in the federal capital in 1910. The Boston regulations prescribe an arbitrary limit of 125 feet for all buildings in

the city and establish two building zones in each of which buildings have an arbitrary maximum height and are limited further by the width of the street on which they are located. The Washington regulations have developed to a greater degree these same principles. It is worth while enumerating some of them:

Section 5. No building shall be erected, altered or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue or highway in its front, increased by twenty feet.

No building shall be erected, altered, or raised in any manner, as to exceed the height of 130 feet on a business street or avenue as the same is now or hereafter may be lawfully designated, except on the north side of Pennsylvania avenue between First and Fifteenth streets, northwest, where an extreme height of 160 feet will be permitted.

On a residence street, avenue or highway no building shall be erected, altered, or raised in any manner, so as to be over 80 feet in height to the top of the highest ceiling joists or over 85 feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by 10 feet, except on a street, avenue, or highway 60 to 65 feet wide, where a height of 60 feet may be allowed; and on a street, avenue or highway 60 feet wide or less, where a height equal to the width of the street may be allowed.

From this casual survey it is evident that a start has been made in every field of legislative activity affecting city planning. With the increase in number and experience of city-planning commissions we shall expect both helpful amendments in the legislation creating the planning agencies and a greater body of precedents to facilitate the execution of city plans.